

No. 1-12-3444

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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GOLFWOOD SQUARE, LLC, an Illinois Limited Liability Company,	)	Appeal from the
	)	Circuit Court of
	)	Cook County
Plaintiff-Appellee,	)	
	)	
v.	)	No. 12 L 51069
	)	
ROBERT STEJSKAL,	)	Honorable
	)	Frank Castiglione,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE MASON delivered the judgment of the court.  
Justices Hyman and Pucinski concurred in the judgment.

**ORDER**

¶ 1 *Held:* Appeal dismissed for lack of jurisdiction because defendant's notice of appeal was not timely filed following the trial court's denial of his posttrial motion to vacate an agreed judgment order pursuant to the parties' settlement agreement.

¶ 2 Plaintiff-appellee, Golfwood Square, LLC, is the owner of commercial property located in Schaumburg, Illinois that it leased to MAC Enterprises LLC, a limited liability company

indirectly owned by Michael O'Malley and defendant-appellant, Robert Stejskal.<sup>1</sup> Stejskal and O'Malley personally guaranteed MAC's performance under the lease. This appeal arises out of Golfwood's enforcement of an agreed judgment order relating to disputes among the parties under the lease.

¶ 3 After Golfwood commenced two lawsuits relating to the parties' breaches of their obligations under the lease and guarantees, the parties negotiated a settlement and the trial court entered an agreed judgment order reflecting the parties' agreement. Stejskal appeals the trial court's denial of his motion to vacate the agreed judgment order and his motion to reconsider the ruling on that order. He claims that the agreed judgment order should be vacated because: (1) he was not served with a copy of the summons or complaint in the breach of contract action; (2) he was not represented by the attorney who signed the agreed judgment order on his behalf; and (3) his understanding of the settlement negotiations was not correctly memorialized in the settlement agreement and agreed judgment order. Golfwood claims that this court lacks jurisdiction to hear Stejskal's appeal because he failed to timely file a notice of appeal within 30 days of the trial court's denial of his motion to vacate. For the reasons that follow, we dismiss this appeal for lack of jurisdiction.

¶ 4 BACKGROUND

¶ 5 Golfwood is an Illinois limited liability company that owns the Golfwood Square Shopping Center in Schaumburg, Illinois. Stejskal and O'Malley<sup>2</sup> control MAC. On November 4, 2009, MAC executed a 26-month lease with Golfwood to rent 16,570 square feet of

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<sup>1</sup> Sean Patrick Enterprises and RTKL Enterprises are MAC's members. O'Malley is the manager of Sean Patrick Enterprises and Stejskal is the manager of RTKL Enterprises.

<sup>2</sup> O'Malley is not a party to this appeal.

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commercial space in the shopping center for a monthly rent of \$26,522.50 payable on the first of the month for the first year and increasing annually thereafter. The lease provided for a discounted monthly rent of \$25,000 for the first year if the rent was paid by 3 p.m. on the first of the month. MAC operated a bar/restaurant/nightclub business on the premises. Also on November 4, 2009, O'Malley and Stejskal each executed a personal guaranty ensuring MAC's rental payments and all other charges and sums payable to Golfwood. The guaranty had no limitation on Stejskal's and O'Malley's personal liability and it expired on June 30, 2012.

¶ 6 In 2011, MAC routinely paid its rent late and, at times, failed to make any rental payments at all. Golfwood sent MAC a notice of default consistent with the lease terms, and MAC failed to cure the default within the cure period set forth in the notice. On November 4, 2011, Golfwood filed a verified complaint for forcible entry and detainer against MAC. On December 8, 2011, the trial court entered an order awarding Golfwood: (1) judgment for possession effective that same day; (2) use and occupancy for the leased premises of \$18,000 per month due on the first of the month as long as MAC remained in possession; and (3) a monetary judgment against MAC in the amount of \$905,000. Enforcement of the order was stayed until January 9, 2012, pending settlement negotiations between the parties.

¶ 7 On February 9, 2012, while negotiations were ongoing, Golfwood filed a breach of contract action against both Stejskal and O'Malley, in their individual capacities, based on their guarantee of MAC's rental payments. Golfwood sought damages consisting of past due rent of \$1,059,859.63, plus additional accrued rent and attorneys' fees and costs from both individuals jointly and severally. Golfwood asserted that Stejskal's and O'Malley's failure to pay the amounts

due and owing under the lease amounted to a breach of their personal guarantees.

¶ 8 On March 1, 2012, Golfwood, MAC, Stejskal, O'Malley and BCFL, LLC<sup>3</sup> entered into a "Settlement Agreement and Release" (Agreement). As part of the settlement, Stejskal and O'Malley agreed to the entry of a \$915,000 personal judgment against them jointly and severally relating to the guaranty action. According to the Agreement's terms, Stejskal and O'Malley also agreed to: (1) facilitate the prompt entry of the personal judgment by accepting service of process from Golfwood in the breach of contract action; (2) file appearances in the case; and (3) execute an agreed judgment order substantially similar to the form order attached as an exhibit to the Agreement. Both Stejskal's and O'Malley's signatures appear on the execution page of the Agreement. Also as part of the settlement, Stejskal and O'Malley executed a new guaranty contract.

¶ 9 Simultaneous with the execution of the Agreement, a new lease was executed between Golfwood and MAC with the lease term commencing on May 1, 2012. The new lease reduced the amount of rent payable each month to \$18,000. In the Agreement, the parties stipulated that Golfwood's enforcement of the agreed judgment would be stayed unless and until MAC defaulted on its obligations under the new lease. The settlement terms also required MAC to make two lump sum payments to Golfwood of \$100,000 and \$65,000, payable on May 1, 2012 and July 1, 2012, respectively. Provided that the lump sum payments and rental payments were timely made under the new lease provisions, those payments would be credited against the

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<sup>3</sup> BCFL is an entity owned and controlled by Stejskal that previously rented the same commercial space rented by MAC. On November 4, 2009, MAC subleased the premises from BCFL.

judgment already entered against MAC and the agreed judgment to be entered against Stejskal and O'Malley personally. Under that payment structure, all liability due under the judgments would be satisfied by the end of the new lease term of 26 months.

¶ 10 Stejskal previously retained the law firm of Piccione Keeley & Associates, Ltd. to draft the underlying lease agreement between MAC and Golfwood and that firm represented MAC in the forcible entry and detainer action. Mark W. Tader, an attorney at Piccione Keeley & Associates, also assisted in drafting the Agreement. Stejskal and O'Malley were included on multiple email communications with Tader and they sent him their personal financial statements and signature pages to the Agreement and new guaranty.

¶ 11 As noted, attached as an exhibit to the Agreement was a form of an agreed judgment order, which was identical to the order later entered by the trial court. Tader signed the agreed order as attorney for O'Malley and Stejskal. Tader, however, did not file an appearance in the breach of contract action with the trial court although he did send an appearance for both Stejskal and O'Malley to counsel for Golfwood. On April 9, 2012, the trial court entered the agreed judgment order. Pursuant to the terms of the settlement, the agreed order provided that: (1) judgment was entered in favor of Golfwood and against Stejskal and O'Malley, jointly and severally, in the amount of \$915,000 and (2) enforcement of the order was stayed pending further order of court pursuant to the Agreement.

¶ 12 MAC failed to make the \$100,000 lump sum payment that was due on May 1, 2012, under the Agreement's terms. On May 3, 2012, Golfwood filed a motion to lift the stay of enforcement of the trial court's April 9, 2012 agreed order. On May 9, 2012, an attorney, who

was not associated with Piccione Keeley & Associates, filed an appearance on behalf of Stejskal.

¶ 13 On May 16, 2012, Stejskal filed a motion to vacate the agreed order asserting that the order: (1) was not reflective of the information provided to him during the settlement negotiations; (2) did not constitute a meeting of the minds; and (3) was not signed by him.<sup>4</sup>

Stejskal also asserted that the agreed order was void and of no effect because an appearance on his and O'Malley's behalf was not filed nor did they file a *pro se* appearance. As to the merits of the order, Stejskal claimed that the outstanding rent due was substantially less than \$915,000. Stejskal did not attach any exhibits or affidavits to his motion.

¶ 14 On July 2, 2012, the trial court entered an order granting Golfwood's motion to lift the stay and denying Stejskal's motion to vacate. On August 1, 2012, Stejskal filed a motion to reconsider the trial court's order denying his motion to vacate. In support of his motion to reconsider, Stejskal submitted an affidavit in which he averred that he did not personally execute the Agreement or guaranty because he was experiencing debilitating chronic back pain that left him bedridden and on several medications. Instead of personally signing the Agreement and guaranty himself, he instructed his wife to sign the documents on his behalf and in his name. The trial court denied the motion to reconsider on October 16, 2012.

¶ 15 On November 15, 2012, within 30 days of the denial of his motion to reconsider, Stejskal

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<sup>4</sup> O'Malley also filed a motion to vacate on the same day that Stejskal filed his motion. O'Malley asserted that but for Stejskal's agreement to settle, he would not have executed the Agreement and would have instead disputed the underlying charges. O'Malley also asserted that he was not aware that Stejskal lacked the required funds to satisfy the settlement's terms and only became aware of that fact when he received a copy of Stejskal's motion. The trial court denied O'Malley's motion to vacate on July 2, 2012. O'Malley filed a separate motion to reconsider, which the trial court denied. O'Malley sought leave to file a late notice of appeal on August 31, 2012, which this court denied on September 13, 2012.

filed a notice of appeal. Golfwood filed a motion to dismiss Stejskal's appeal as untimely pursuant to Illinois Supreme Court Rule 361(h) on December 6, 2012. Another panel of this court denied Golfwood's motion to dismiss on January 10, 2013.

¶ 16

#### ANALYSIS

¶ 17 Golfwood reasserts its claim that this court lacks jurisdiction to review Stejskal's appeal because his notice of appeal was not filed within 30 days of the trial court's denial of his motion to vacate. Pointing to the denial of Golfwood's motion to dismiss, Stejskal urges us to refrain from addressing the jurisdictional issue. As discussed below, the procedural posture of this case, as well as jurisdictional considerations at the trial court level, are complicated. Thus, without an in-depth examination of the record and the issues raised by the motion to dismiss, it would have been difficult to discern the merits of the parties' respective positions. Further, because the motion to dismiss concerns jurisdiction over this appeal, it is appropriate for Golfwood to ask us to re-visit the issue and, indeed, we have a duty to do so. See *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 251-52 (2010) (noting that "a reviewing court has a duty to consider its jurisdiction and to dismiss the appeal if it determines that jurisdiction is wanting" (internal quotation marks omitted) (quoting *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 539 (1984))). Therefore, we will address our jurisdiction over Stejskal's appeal.

¶ 18 Jurisdiction is conferred upon this court by the filing of a notice of appeal within 30 days after the trial court's entry of the final judgment in a case. Ill. S. Ct. R. 303(a)(1) (eff. May 30, 2008). The filing of a timely postjudgment motion tolls the time in which a notice of appeal must be filed until 30 days after the trial court's entry of the order disposing of that motion. *Id.*

A motion to vacate is a posttrial motion that tolls the 30-day time period in which a notice of appeal must be filed. *Vanderplow v. Krych*, 332 Ill. App. 3d 51, 53 (2002). However, a motion to reconsider the trial court's ruling on a postjudgment motion will not toll the running of the time for filing a notice of appeal. Ill. S. Ct. R. 303(a)(1) (eff. May 30, 2008).

¶ 19 Golfwood contends that Stejskal's notice of appeal was untimely because it was filed 136 days after the trial court denied the motion to vacate the agreed judgment order. Golfwood maintains that Stejskal's motion to reconsider the denial of his motion to vacate was a second posttrial motion, which does not toll the statutory 30-day time period to timely file a notice of appeal. Ill. Sup. Ct. Rule 303(a)(2) (eff. June 4, 2008). Stejskal claims that his motion to reconsider was his first, and not his second, posttrial motion. Because he filed his notice of appeal on November 15, 2012, within 30 days of the denial of his motion to reconsider, Stejskal maintains that his notice of appeal was timely filed.

¶ 20 We agree with Golfwood. Although Stejskal characterizes his motion to vacate the agreed judgment order as something other than a posttrial motion, he offers no explanation of what other type of motion it could fairly be characterized as. It was a motion to vacate a judgment, albeit one entered by agreement. The fact that Stejskal claims he did not agree either to the terms of the Agreement or to the entry of the agreed judgment order does not alter the nature of his motion or the relief he sought. By his motion, Stejskal sought to set aside the judgment, the hallmark of relief typically requested in a posttrial motion. The trial court believed Stejskal's motion to vacate was a posttrial motion as the court considered it pursuant to 735 ILCS 2-1301(e). Stejskal's motion for reconsideration, therefore, was the second motion seeking relief



from the agreed judgment order and it was ineffective to toll the time in which Stejskal was required to file his notice of appeal.

¶ 21 In an analogous context, it has been recognized that a motion to vacate the dismissal of an action falls under the parameters of Rule 303(a). In *State Mechanical Contractors, Inc. v. Village of Pleasant Hill*, 132 Ill. App. 3d 1027, 1029 (1985), this court treated the plaintiff's motion to vacate the dismissal of its complaint as a posttrial motion, notwithstanding that there had been no trial and the only ground set forth in the motion was plaintiff's claim that the trial court issued its ruling before allowing plaintiff an opportunity to present authority in support of its position. Defendant argued that because plaintiff's motion was not a posttrial motion within the meaning of Rule 303(a), it did not toll the time for filing a notice of appeal and, therefore, plaintiff's notice of appeal filed within 30-days of the denial of its motion to vacate was untimely. *Id.* This court disagreed finding that to constitute a posttrial motion under Rule 303(a), the motion need only be "directed against the judgment" and that "[a] post-trial motion need not come after a trial in the traditional sense in order to toll the time for filing a notice of appeal." *Id.* See also *Hanna v. American National Bank & Trust Company of Chicago*, 176 Ill. App. 3d 938, 942 (1988) (motion qualifies as posttrial motion under Rule 303(a) if it requests that judgment be vacated).

¶ 22 Here, on its face, Stejskal's motion to vacate filed within 30 days of the entry of the agreed judgment order sought relief contemplated under Rule 303(a) and, therefore, constitutes a posttrial motion. The trial court's denial of Stejskal's motion was thus a final and appealable order and Stejskal was obligated, but failed to file his notice of appeal within 30 days. Given the

untimeliness of Stejskal's notice of appeal, we lack jurisdiction to consider the issues he raises on appeal.

¶ 23 Nevertheless, presumably invoking the maxim that a void judgment may be attacked at any time, *Ford Motor Credit Co. v. Sperry*, 214 Ill. 2d 371, 379 (2005), Stejskal contends that the agreed judgment order was "void" for a variety of reasons, including that: (1) he was not a party to the breach of contract action because he was not served with a summons or a copy of the complaint; (2) he had no knowledge of the breach of contract action; (3) he had not appeared in the breach of contract action; (4) the attorney who executed the agreed judgment order did not represent him; (5) he did not agree to the Agreement's terms; and (6) he had no notice of the trial court's entry of the agreed judgment order.

¶ 24 The Agreement's terms and Stejskal's own affidavit refute his characterization of the agreed judgment order as "void." Because Stejskal participated in the settlement negotiations and instructed his wife to execute the Agreement, he is deemed to have knowledge of the terms of the Agreement and can be held accountable to satisfy those terms. *Urban Sites of Chicago, LLC v. Crown Castle USA*, 2012 IL App (1st) 111880, ¶40. The Agreement clearly referenced the breach of contract action by case name and number and required Stejskal to accept service of process relating to that action. Therefore, Stejskal's claim that he was unaware of the second action is refuted on the face of the Agreement. The Agreement also required Stejskal to execute an agreed judgment order substantially similar to a form order attached as an exhibit, which indicated that he was represented by the law firm that he now disputes he retained even though he permitted the law firm to work with Golfwood to draft the Agreement. The fact that no

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appearance was filed on his behalf in the breach of contract action is immaterial given his consent to the entry of the agreed judgment order. Thus, the procedural deficiencies that Stejskal raises to attack the validity of the agreed judgment order were plainly addressed in the Agreement, which Stejskal authorized his wife to execute. We reject Stejskal's attempt to classify as "void" a valid agreed judgment order incorporating a settlement agreement that he consented to and executed.

¶ 25

#### CONCLUSION

¶ 26 For the reasons stated herein, this appeal is dismissed for lack of jurisdiction.

¶ 27 Appeal dismissed.